nity only. From this rule it follows that the insured can in no case recover more than the actual damages that would have been sustained, had the contract not existed. It is to be noted that the prohibition against wagers invalidates the contract *ab initio*, while the rule that the insurance contract is one of indemnity assumes a valid contract and relates merely to the damages to be recovered. It may be that the statement, that an insurable interest is necessary to a valid policy, is but an abridged and inexact expression of the two rules stated. Possibly, however, the requirement creates a further limitation upon insurance contracts.

Insurance provides a means whereby losses of various kinds, otherwise borne primarily by individuals, are distributed among the community at large. If the chance that loss may come to an individual on the happening of a certain event be very remote, then, even although insurance against the possible loss be not a wager, and although there could be no recovery upon the contract by the insured unless loss occurred to him, yet public policy may demand that no such insurance contract be made. To require that the insured stand in a certain relation to the subject-matter of the contract is in effect limiting, in the direction just stated, the kinds of losses that may be insured against. It may well be thought that public policy does not require a limitation of this sort.

In a case lately decided in Colorado the doctrine of insurable interest was involved. One in possession of land but not claiming title, insured buildings thereon under a *bona fide* belief that he owned them. The court allowed recovery on the policy for an amount not stated. *American, etc., Co.* v. *Donlon*, 66 Pac. Rep. 249. As the insured did not intend to make a wager the policy was rightly held valid. *Cf. Marks* v. *Hamilton*, 7 Ex. 323; but see *Sweeny* v. *Franklin Fire Ins. Co.*, 20 Pa. St. 337. The measure of damages should have been the actual loss occasioned to the insured by the destruction of the buildings.

Accrual of Cause of Action for Failure of Surface Support. — The question whether the owner of the surface of land acquires a right of action against the owner of the subjacent strata at the moment the latter removes the support, or only when the actual subsidence of the surface occurs, has not arisen often in America. In England it has come before the courts with some frequency, and it has there been decided by a unanimous opinion of the House of Lords that the Statute of Limitations begins to run not from the time of the excavating, but from that of the cave-in. *Backhouse* v. *Bonomi*, 9 H. L. Cas. 503. While few American cases raise the precise point many courts evidently regard the English doctrine as the settled rule. See *Smith* v. *Seattle*, 18 Wash. 484.

A discussion of this point in a recent Pennsylvania case consequently arouses interest when it appears that the court takes a directly contrary position and holds that the Statute runs from the date of the mining. *Noonan* v. *Pardee*, 50 Atl. Rep. 255. While acknowledging the final decision of *Backhouse* v. *Bonomi*, *supra*, the court regards it as being ill adapted to the conditions of coal mining in America. The court argues that since the plaintiff in the principal case knew that mines existed below his land, and since he had a right to investigate, and see that proper support had been left, his right of action arose when the mine

owner removed coal without leaving such support. To the argument that the plaintiff by careful observation might not have been able to discover the defendant's breach of duty, the court answers that that is "one of the incidents attending the purchase of land over coal mines." Later the court refers to the right of the surface owner to sue, as a "right which from the nature of the case could not have had more than a doubtful existence before the actual damage occurred" — an admission which seems to detract from the weight of the earlier reasoning.

The English rule regards the plaintiff's right as a right to the ordinary undisturbed enjoyment of the surface. The defendant's right on the other hand is to excavate the minerals from the subjacent strata, and so long as he acts without disturbing the plaintiff, he is within his rights. When the subsidence occurs, the plaintiff's enjoyment of the surface is interfered with, and his right of action accrues. In an apparently analogous class of cases where a railroad builds an embankment but negligently fails to put in proper drainage culverts and flood water is at times thrown on the plaintiff's land, the courts seem almost universally to have held that the Statute runs, not from the building of the embankment, but from the time of actual damage to the plaintiff. *St. Louis, etc., Co.* v. *Briggs*, 52 Ark. 240. On the whole then it would seem that the position of the principal case is hardly to be supported as against the reasonable and convenient rule of the English courts.

THE PAROL EVIDENCE RULE AS APPLIED TO INSURANCE POLICIES. — The United States Supreme Court has handed down a decision that will have a far reaching effect upon the liability of insurance companies. The plaintiff brought action upon an insurance policy issued by an agent of the defendant. The policy contained conditions that it should be void if other insurance existed upon the property covered by its terms, and that no agent should have power to waive any condition of the policy unless such waiver were endorsed in writing upon the policy. The defence was that the property covered by the policy was in fact insured in another company at the time of the issuance of the policy. The plaintiff maintained that the defendant's agent, who had full powers to accept risks and issue policies, knew of the additional insurance when he issued the policy, and should be deemed to have waived the provision. The court, with three judges dissenting, held that the knowledge of the agent would not avoid the stipulation in the policy. *Assurance Co.* v. *Building Association*, 22 Sup. Ct. Rep. 133.

Although there is a conflict upon the point the great weight of authority is opposed to this decision. The reasoning of the principal case is that the insurance policy constitutes the contract of the parties, that by its terms the limitations of the agent's authority are brought home to the insured, and that to sustain the plaintiff's contention would be to vary a written contract, in violation of the parol evidence rule. As a matter of fact, however, a binding insurance contract is commonly made before the policy is issued. The agent of the insurer acting within the apparent scope of his authority agrees to assume the risk and issue the policy, and the insured agrees to pay for the policy when issued. The policy is merely the reduction into writing of a contract already existing, and if a loss occurs before the policy is issued the insurer is liable. *In-*